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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JUAN HONG,	
Plaintiff and Appellant,	G042769
v.	(Super. Ct. No. 06CC09391)
STANLEY GRANT et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from an order of the Superior Court of Orange County, Andrew P. Banks, Judge. Motion for sanctions. Order affirmed. Motion denied.

Juan Hong, in pro. per., for Plaintiff and Appellant.

Paul, Plevin, Sullivan & Connaughton, Richard A. Paul, Sandra L. McDonough, Michael J. Etchepare and Kari D. Searles for Defendants and Respondents.

* * *

Plaintiff Juan Hong appeals from an order denying his motion to strike or tax costs, claiming the trial court erred in awarding costs on appeal to defendants Stanley Grant, Nicolaos Alexopoulos, Herbert P. Killackey, Michael R. Gottfredson and The Regents of the University of California after they failed to use the mandatory form, including its exact verification language, to request costs. Plaintiff did not attack the costs on any basis except that, and the trial court ruled defendants had substantially complied. We agree and affirm.

Plaintiff filed a motion for sanctions, arguing defendants included irrelevant material in the respondent's brief. Finding no merit in this claim, we deny the motion.

FACTS AND PROCEDURAL HISTORY

After we affirmed a judgment in favor of defendants against plaintiff (*Hong v. Grant* (Dec. 8, 2008, G039959) [nonpub. opn.]), and the remittitur awarding costs to defendants was filed, defendants timely filed a memorandum of costs seeking over $1,800. Rather than using the Judicial Council form for costs after appeal (appeal form), designated as "mandatory," defendants submitted their request on the Judicial Council form entitled "Memorandum of Costs (Summary)" (bold and capitalization omitted), designated as "Optional" (optional form). Attached to the optional form were four worksheet pages detailing the components of the request. The standard verification language on the summary form reads: "To *the best of my knowledge and belief* this memorandum of costs is correct and these costs were necessarily incurred in this case." (Italics added.) The standard verification language on the memorandum form for appellate costs reads: "To *the best of my knowledge*, the items of cost are correct and were necessarily incurred in this case on appeal." (Italics added.)

After the court granted plaintiff's motion to extend time to do so, plaintiff filed a motion to tax or strike the costs on the sole grounds that defendants used the

wrong form and the wrong verifying language. Before the hearing on the motion defendants filed a new memorandum of costs using the appeal form, again attaching the worksheet pages.

The court held a hearing on the motion and then denied it, adopting its tentative ruling. As to the verification, the court ruled that it "included all of the statements and information required by [California Rules of Court,] rule 3.1700(a)(1). It simply includes the additional phrase 'and belief.' . . . [T]he inclusion of this additional statement does not make the memorandum hearsay and does not otherwise invalidate the verification. If the verification stated 'or belief' or was based on 'information and belief,' [p]laintiff would have a stronger argument. However, the inclusion of the additional statement 'and belief' does not weaken or otherwise invalidate the verification."

The court stated defendants had used the wrong form but found they had "substantially complied." Defendants had attached to the preprinted form "a table that provided more detail regarding the requested costs than is required by the mandatory form." The court also noted plaintiff had not provided any authority that use of the optional form mandated striking the memorandum of costs.

DISCUSSION

1. Form and Verification

In support of his arguments that defendants' use of the optional form and the verification on that form bars recovery of costs, plaintiff relies on California Rules of Court, rule 3.1700(a)(1) (all further references to rules are to the California Rules of Court), which provides that a "memorandum of costs must be verified by a statement of the party[or] attorney . . . that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case." Plaintiff contends the rule's use of the word "must" requires that the exact language be used and addition of the language "and

belief" invalidates the verification. But, as the trial court noted, plaintiff failed to provide any authority to support his premise and there is none.

Neither use of the optional form nor use of the verification language on that form invalidates the memorandum defendants filed. First, nothing in rule 3.1700(a)(1) states that the verification language must be quoted exactly. Second, the optional form has been approved by the Judicial Council and is commonly used. (Rule 1.35(a) ["Forms approved by the Judicial Council for optional use, wherever applicable, may be used by parties and must be accepted for filing by all courts"; see also, e.g., *Anthony v. City of Los Angeles* (2008) 166 Cal.App.4th 1011, 1014 [award of fees requested by using optional form affirmed].) The fact it is an optional form or one commonly used to seek trial court costs is of no consequence. There is no difference in the information that must be provided to the court for an award of costs after trial as opposed to costs on appeal.

Rule 1.31(a) does not invalidate the memorandum. It does provide that Judicial Council mandatory forms must be used. But rule 1.31(g) states "[a]n otherwise legally sufficient court order for which there is a mandatory Judicial Council form is not invalid or unenforceable because the order is not prepared on a Judicial Council form or the correct Judicial Council form." This expresses an intent that substantial compliance, not use of a particular form, is what the Judicial Council seeks. (See also rule 1.5(a) ["The rules . . . of the California Rules of Court must be liberally construed to ensure the just and speedy determination of the proceedings they govern"].)

And whether using the optional form or the mandatory appeal form, a party or counsel must set out the amount of the costs and its components and declare the information correct to the best of his or her knowledge. (Rules 3.1700(a)(1) & 8.278(c)(1) [party seeking costs on appeal must file "verified memorandum of costs under rule 3.1700"].) Defendants' lawyer made such a statement in signing the optional form. Addition of the word "belief" in the verification signed does change the meaning of the statement. Plaintiff has not provided any logical or persuasive explanation, other

than a rigid adherence to the language of rule 3.1700, for why knowledge and belief would invalidate the verification.

Cases on which plaintiff relies, none of which come from California courts, do not support his position. Instead, they directly contradict it. For example, in *Skinner v. Aetna Life and Cas*. (D.C.Cir. 1986) 804 F.2d 148 the court determined knowledge and belief was not a "subjective understanding" as was "understanding and belief." (*Id*. at p. 151.) Rather, the former phrase "refer[red] to knowledge as well as belief." (*Ibid*., italics omitted.) Likewise, in *United States v. Nektalov* (2d Cir. 2006) 461 F.3d 309, in discussing the principle of conscious avoidance in criminal cases, the court stated: "Contrary to Nektalov's contention that belief and knowledge are entirely discrete concepts, belief is more properly understood to be a part of knowledge." (*Id.* at p. 314, fn. omitted.) Further, knowledge and belief is not the equivalent of the lesser standard of "information or belief." By using "knowledge and belief" the signer is stating he or she knows the contents of the document. There is no support for plaintiff's claim the contents of the memorandum were hearsay.

Moreover, despite the language of rule 3.1700 case law allows substantial compliance with verification language. For example, in *Pacific Southwest Airlines v. Dowty-Rotol, Ltd*. (1983) 144 Cal.App.3d 491 the party seeking costs verified the memorandum of costs by stating the information in it was true. The court denied a motion to strike the memorandum, finding "the verification substantially met the requirement" under a prior statute that it state "the items claimed as costs are correct" "to the best of the declarant's knowledge and belief." (*Id*. at p. 495.)

The same sentiment is expressed in *Fischbach and Moore Intern. Corp. v. Christopher* (Fed.Cir. 1993) 987 F.2d 759 where, in rejecting a "hyper-technical argument," the court held verification of a claim to the best of the signer's "understanding and belief" substantially complied with the statutory requirement the verification be to the best of one's "knowledge and belief." (*Id*. at pp. 760, 762, 763.)

Contrary to plaintiff's claim, use of the exact language is not "essential to promote the statutory design" (bold omitted) of the cost bill procedure.

Plaintiff relies on former Code of Civil Procedure section 1033, the statute that set out the language for verification of costs before enactment of rule 3.1700, that cost amounts were correct "to the best of [the signer's] knowledge and belief." (Bold omitted.) He asserts common sense dictates there were "obvious reasons" why the Judicial Council changed the language in enacting rule 3.1700. But his bare claim there are obvious reasons does not explain the change or why the verification defense counsel originally signed would not suffice.

Although defendants' original memorandum of costs was sufficient, they filed a second memorandum of costs using the exact verification language found in rule 3.1700(a)(1). Plaintiff argues it cannot be considered because not filed within the 40-day time period set out in rule 8.278(c)(1). But, rather than being treated as a new memorandum, it can be viewed as a supplemental memorandum using the verification language set out in rule 3.1700(a)(1). (See *Pacific Southwest Airlines v. Dowty-Rotol, Ltd.*, *supra*, 144 Cal.App.3d at p. 495 [where initial memorandum of costs did not state costs were necessarily incurred, proper exercise of discretion for court to allow party to file supplemental memorandum with verification containing exact statutory language].) There was no new information; the only difference was the verification language.

Our determination of this appeal does not involve statutory construction or counsel's mistake or excusable neglect in using the summary form as opposed to the appeal form.

In sum, the memorandum of costs defendants filed was sufficient. Plaintiff did not object to any items or amounts of costs. Therefore, there is no basis to reverse the court's order.

2. Timeliness of Respondents' Brief

Defendants did not file their respondents' brief on time. A week after it was due they filed a motion to file a late brief, explaining the counsel had miscalculated the filing date. With that motion they submitted their proposed respondents' brief. We granted that motion.

Plaintiff argues in his reply brief that we should strike the brief. We will not do so. First, we have already granted the motion. We did not have to wait for plaintiff's opposition to do so. These motions are routinely granted. Rarely does the other party oppose a motion and opposition is not appropriate here. Contrary to plaintiff's argument, this is a prime example of an excusable mistake. (Rule 8.60(d) ["a reviewing court may relieve a party from default for any failure to comply with these rules"]; *Peebler v. Olds* (1945) 26 Cal.2d 656, 658 [reviewing court has a broad power to grant relief from default"].)

3. Motion for Sanctions

In their respondents' brief defendants described several other cases in which plaintiff has sued The Regents and its employees. They stated they "summarize[d] the[] lawsuits to educate this [c]ourt of the ceaseless barrage of lawsuits and appellate review brought by [plaintiff] against The Regents and its employees . . . ." Relying on rule 8.276(a)(2), plaintiff argues we should impose sanctions because this information is "not reasonably material to the appeal's determination." He seeks $3,000 for himself, calculated at $300 per hour for 10 hours of time, and $2,000 to be paid to the court "for [the] cost of processing [his] motion]."

The motion is not well taken. Rule 8.276(a)(2) prohibits including irrelevant matter in the appellate record, not the brief. Further, plaintiff has not cited any authority for an award of sanctions to a pro. per. lawyer. (See *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1180 [denial of discovery sanctions to pro. per. counsel; "[n]o

sanctions case has approved an award based on reasonable expenses for the time and effort expended by a pro se litigant"; see also *Musaelian v. Adams* (2009) 45 Cal.4th 512, 517 [pro. per. lawyer not entitled to attorney fees sanctions under Code Civ. Proc., § 128.7].) Finally, we would not have had to spend any time "processing" this motion that borders on the frivolous had plaintiff not filed it.

DISPOSITION

The order is affirmed. The motion for sanctions is denied. Respondents are entitled to costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.